## REMARKS

Claims 1-24 are pending in the present application. No claims were canceled; claims 1, 9, and 16 were amended; and no claims were added. Reconsideration of the claims is respectfully requested.

Applicants would like to thank the Examiner for his courtesy in holding a telephone conference with applicants' representative on February 17, 2005. During the telephone conversation, the Examiner and applicants' representative discussed the patentability of the currently pending claims in light of *Gu* (U.S. Patent No. 6,744,780). *Gu* teaches a system for managing a communications network by establishing an initial polling interval for corresponding network elements. While applicants do not necessarily find the claims of the present application to be unpatentable in light of *Gu*, applicants have amended the claims such that each of the independent claims provide further definition to "management information" by reciting "wherein management information comprises operational history" (in *Gu*, individual network elements are polled merely for status messages, instead). This feature is described from page 9, line 19, to page 10, line19, of the current specification. Thus, each of the currently pending claims in the present application, at least as amended, recites at least one feature that is not taught or suggested by *Gu*.

### I. 35 U.S.C. §102, Anticipation, Claims 1-3, 5, 7-10, 12, 14-18, 20, and 22-24

The Examiner has rejected claims 1-3, 5, 7-10, 12, 14-18, 20, and 22-24 under 35 U.S.C. Section 102 as being anticipated by *Gu* (U.S. Patent No. 6,744,780). This rejection is respectfully traversed.

With regard to claim 1 being anticipated by *Gu*, the Examiner states:

> As to claim 1, Gu teaches the invention as claimed, including a method of managing a system, comprising:
>
> determining a period for sending management information requests to the system (col. 3 lines 14-24, initial polling interval of network element 20);
>
> sending a management information request to the system in accordance with the determined time period (col. 2 lines 29-42; col. 3 lines 14-24); and
>
> performing management of the system based on a response received from the system, wherein the period for sending the management

> information request is determined based on an operating status of the system (col. 3 lines 26-40; adjust the initial polling to a subsequent polling interval).

(*Office Action*, dated November 17, 2004, page 3). Independent claim 1, which is representative of independent claims 9 and 16 with regard to similarly recited subject matter, reads as follows:

> 1. A method of managing a system, comprising:
> determining a period for sending management information requests to the system, wherein management information comprises operational history;
> sending a management information request to the system in accordance with the determined period; and
> performing management of the system based on a response received from the system, wherein the period for sending the management information request is determined based on an operating status of the system.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir.1990). The *Gu* reference cited by the Examiner does not anticipate the present invention as recited in claim 1, because *Gu* fails to teach each and every element of the claim. Rejected independent claim 1 recites, "determining a period for sending management information requests to the system, wherein management information comprises operational history" and "sending a management information request to the system in accordance with the determined period." The feature of sending management information requests to a system, wherein the management information comprises operational history, is not taught by *Gu*.

As discussed in the Abstract, *Gu* is directed towards a method for managing a communications network by establishing an initial polling interval for corresponding network elements. The network management system detects whether the network element provides at least one status message during a group of subsequent polls. The network management system adjusts the initial polling interval for the network element based on the detection of the status message to adaptively meet the communications traffic requirements. In summary, *Gu* provides a dynamically adaptive polling interval

commensurate with status messages generated by individual network elements in communication with the network management system.

The Examiner alleges that *Gu* teaches determining a period for sending management information requests to the system and sending a management information request to the system in accordance with the determined period in the following cited sections:

> FIG. 1 shows a block diagram of a network management system 10. FIG. 2 shows the network management system 10 (NMS) of FIG. 1 communicating with one or more network elements (NE) 20. The network management system 10 includes a central control unit (CCU) 12, a configurator unit (CU) 14, a polling unit (PU) 16, a user interface 15, input/output ports 13, and a status message detector 17. The user interface 14, such as a graphical user interface or any other suitable interface, is coupled to the configurator unit 14 and the central control unit 12. The central control unit 12 is further adapted to communicate with at least the configurator unit 14, the detector 17, and the polling unit 16. The input/output ports 13 are coupled to at least one detector 17 and the polling unit 16.

(*Gu*, col. 2, lines 29-42).

> The polling unit 16 polls the network elements 20 at an initial polling interval in accordance with the configuration data under the direction of the central control unit 12. The central control unit 12 may establish an initial polling interval for each corresponding network element 20. The polling interval refers to a time lapse between an earlier poll of a particular network element 20 and the next later poll of the particular network element 20. The polling unit 16, the central control unit 12, or both may adjust or scale the polling interval for each network element 20 between a maximum polling interval and a minimum polling interval defined in the configuration data.

(*Gu*, col. 3, lines 14-24).

The polling of network elements in the cited sections above does not teach the sending of management information requests to a system, wherein the management information comprises operational history. The referenced sections in *Gu* recite the network elements as including "a polling unit (PU) 16 . . . a status message detector 17. . . and one or more network elements 20." The paragraph that follows the column 3 section

referenced by the Examiner explains the relationship between these elements. After the polling unit polls the network elements,

> In general, the detector 17 detects whether the network element 20 provides at least one status message during a group of sequential polls. During the detection procedure, each poll within the group is separated by the initial polling interval. The polling unit 16 may adjust the initial polling interval to a subsequent polling interval based on the detection of one or more status messages in the group.

(*Gu*, column 3, lines 25-32)

The precise nature of the status messages detected in response to the polling of individual network elements is more evident in a section of *Gu* referenced elsewhere by the Examiner: "The polling unit 16 may decrease the initial polling interval to the subsequent polling interval on a logarithmic scale if a *fault message is continuously detected* within the group of total executed polls associated with the initial polling interval." (*Gu*, column 9, lines 25-29, emphasis added). *Gu* even directly equates the status messages with alarms for the condition when "a network element 20 does not send an alarm or status message." (*Gu*, column 9, lines 17-18). In summary, *Gu* teaches polling of individual network elements in order to detect status, fault, or alarm messages. Although *Gu* teaches a method for managing a communications network that involves adjustment of a communication interval with the individual network elements, it does not teach sending management information requests to a system, wherein management information comprises operational history.

In contrast to the *Gu* invention, the present invention, as recited in independent claims 1, 9, and 16, teaches sending management information requests to a system wherein management information comprises operational history. Although the present invention has the capacity to adjust the period for sending management information requests to a system based upon generating an alert, the requests to a system for management information is not the polling of individual network elements for status, fault, or alarm messages. Management information requests, particularly requests for operational history, differ from polls for faults or alarms, because management information can include data calculations, as opposed to Boolean values for alarms. This

contrast between management information and alarm messages are illustrated by two examples:

> As an example of the type of monitoring which this invention applies, consider the collection of information regarding the number of hypertext transport protocol (http) requests being completed per second by some number N of web-serving appliances. Under a particular load of inbound requests per second L, each server appliance is expected to receive approximately L/N requests per second. To ensure that this is happening, the metaserver may send to each web-serving appliance a request to transmit the number of requests per second that it is receiving. If the values returned are all sufficiently close to L/N, the metaserver can assume that at least *this part of the system* is operating within normal parameters. However, if some of the values are radically different from L/N, then the metaserver has detected an out-of-specification condition.

(Specification, page 9, line 19, to page 10, line 2, emphasis added).

> For example, the metaserver may send a request to a thin server requesting that the thin server indicate the number of access requests received from client devices and the number of times the thin server failed to provide the requested access . . . if the number of times the thin server failed to provide the requested access exceeds a predetermined maximum acceptable threshold, the metaserver may determine that the thin server is not operating within normal parameters.

(Specification, page 10, lines 8-19). Rather than poll for alarms, the present invention requests management information such as the number of times the thin server failed to provide the requested access, or the number of HTTP requests being completed per second by some number of web-serving appliances. While the management information, or operational history, requested from the system is calculated data, it is the centralized metaserver, not the sending elements, that determines if the part of the system is operating within normal parameters. Furthermore, the present invention can request management information from a system, such as some number of web-serving appliances, not just from individual elements within a system or network. Because management information requests, such as requests for operational history, to a system differ clearly from polls to individual elements for alarm messages, *Gu* does not teach sending management information requests to a system. Therefore, *Gu* fails to teach all

elements of the claimed invention, and thus fails to anticipate the invention as recited in independent claims 1, 9, and 16.

Furthermore, *Gu* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement *Gu* sending management information requests to a system, one of ordinary skill in the art would not be led to modify *Gu* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Gu* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the invention.

Therefore, Applicants respectfully request that the rejection of independent claims 1, 9, and 16 under 35 U.S.C. §102 be withdrawn.

Claims 2-8, 10-15 and 17-24 are dependent claims depending on independent claims 1, 9, and 16, respectively. Applicants have already demonstrated claims 1, 9, and 16 to be in condition for allowance. Applicants respectfully submit that claims 2-8, 10-15 and 17-24 are also allowable, at least by virtue of their dependency on allowable claims.

Thus, the rejection of claims 1-24 under 35 U.S.C. §102 has been overcome.

## II. Conclusion

It is respectfully urged that the subject application is patentable over the cited reference and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: 2/17/05

Cathrine K. Kinslow
Reg. No. 51,886
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 385-8777
Attorney for Applicants

CK/jl